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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92054069
Party	Plaintiff Marc Hogue
Correspondence Address	JIMMIE PURSELL JENNINGS STROUSS & SALMON PLC ONE EAST WASHINGTON ST, SUITE 1900 PHOENIX, AZ 85004 UNITED STATES jpursell@jsslaw.com
Submission	Motion to Strike
Filer's Name	Jimmie Pursell
Filer's e-mail	trademarks@jsslaw.com
Signature	/Jimmie Pursell/
Date	09/22/2011
Attachments	Hogue - Motion to Strike.pdf (3 pages)(179353 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark Registration No. 3,099,847 (Application Serial No. 76/641,146)

MARC HOGUE, Petitioner, SKYDIVE ARIZONA, INC., Respondent.	Cancellation No. 92/054,069
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**PETITIONER'S MOTION TO STRIKE PORTIONS OF RESPONDENT'S REPLY IN
SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Petitioner hereby moves to strike Section II¹ of Respondent's Reply in support of its Motion for Summary Judgment. Before the Board is Respondent's Motion to Dismiss arguing 1) claim preclusion, 2) issue preclusion, and 3) failure to state a claim. That Motion was treated as one for Summary Judgment because it raised preclusion issues and referred to items outside those referenced in the Petition. Thus, the issue before the Board is whether or not Petitioner's Cancellation Petition is barred by Respondent's judgment against non-party Mike Mullins. That issue was fully addressed in Petitioner's Response. For the first time in its Reply, Respondent argues that Petitioner has not created a material issue of fact regarding secondary meaning and thus Respondent is entitled to summary judgment on that new ground. Respondent fails to distinguish between the issue of whether a dispute has been previously litigated (and is binding against non-party Hogue) and the merits of the underlying dispute itself. Respondent's Motion

¹ The improper argument regarding secondary meaning was argued in Section II of Respondent's reply brief, but reasserted in portions of Sections IV and V. Petitioner requests that Section II be stricken in its entirety, but also requests that the portions of Sections IV and V and any other portion of the reply referencing the improper argument also be stricken. For the sake of simplicity, the improper argument will be referenced herein as "Section II."

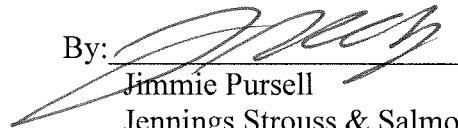
to Dismiss addresses the former, but Section II of the Reply raises for the first time the latter.

Thus, Section II of the Reply is improper and should be stricken.

WHEREFORE, Petitioner respectfully requests an order striking Section II of Respondent's Reply In Support of Motion For Summary Judgment.

Respectfully submitted, September 22, 2011

By:



Jimmie Pursell
Jennings Strouss & Salmon PLC
One East Washington St.
Suite 1900
Phoenix, AZ 85004
(602) 262-5812
Fax (602) 495-2643
trademarks@jsslaw.com

Certificate of Service

The undersigned certifies that a copy of Petitioner's Motion to Strike Portions of Repondent's Reply in Support of Motion for Summary Judgment was sent by certified first class mail to: Sid Leach, Esq., SNELL & WILMER, One Arizona Center, 400 E. Van Buren Street, Suite 1900, Phoenix, AZ 85004.

A handwritten signature in black ink, appearing to read 'MR Perlmutter', written over a horizontal line.

Michelle R. Perlmutter